

APR 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KUI BUN THAI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-70359

Agency No. A078-020-226

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Kui Bun Thai, a native and citizen of Indonesia, petitions for review of a Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for withholding of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

removal and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and deny in part and grant in part the petition for review.

The agency denied Thai’s asylum claim as time-barred. Thai does not challenge this finding in his opening brief.

Substantial evidence supports the IJ’s finding that Thai failed to establish past persecution by persons the government was unable or unwilling to control. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005). Substantial evidence also supports the IJ’s finding that Thai did not demonstrate a pattern or practice of persecution against Chinese Christians in Indonesia. *See Lolong v. Gonzales*, 484 F.3d 1173, 1180-81 (9th Cir. 2007) (en banc). We reject Thai’s contention that the IJ’s decision impermissibly relied on country conditions evidence, because the record reflects that the IJ also relied on Thai’s own testimony to deny his claim. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002) (agency is entitled to rely on all relevant evidence in the record, including country reports).

However, the agency erred by refusing to consider the evidence regarding whether Thai belonged to a disfavored group in assessing his withholding of

removal claim, so we remand to the BIA for reconsideration of this claim. *See Wakkary v. Holder*, 558 F.3d 1049, 1068-69 (9th Cir. 2009); *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

Lastly, substantial evidence supports the agency's denial of CAT relief because Thai failed to show that it is more likely than not he will be tortured if he returns to Indonesia. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**